

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency
Office of the General Counsel



MLA 08-01, (Subpoenas and Summonses)
July 11, 2008

Memorandum of Legal Advice

Issue

From time to time, employees of CFSA receive subpoenas and summonses. This Memorandum is intended to provide a general description of subpoenas and summonses and an explanation of the protocol to be followed by CFSA employees who come into contact with them.

What is a Subpoena?

A *subpoena* is a court-issued order requiring a person to take certain steps, generally to appear in court as a witness or to bring to court documents, papers, or other records designated in the subpoena¹. The subpoena may also require the person to appear not in court but at an office to answer questions under oath about a particular matter. A subpoena may be served by any person who is not a party to the action and is not less than 18 years old. This person is called a "process server" or an "investigator".

The term "subpoena" is Latin for "under punishment" as persons served with a subpoena must comply with it under punishment for failure to appear (or failure to produce the documents). A subpoena can be issued by a court clerk on behalf of a requestor, or an attorney.

What is a Summons?

A *summons* is a paper issued by the court in a lawsuit that informs you that you have been sued. The summons requires that you file a response with the court within a given time period or risk losing the case under the terms of a default judgment². This is important because often times the trial or appearance in court is a matter of days from the date of service.

¹ A subpoena which requires a person to bring documents, etc. to court or other places is also referred to as a "subpoena duces tecum".

² A default judgment is a judgment entered against a defendant who fails to appear in court or to enter a plea when required to do so.

Rules and Laws that Govern the Issuance of Subpoenas in Civil and Neglect Related Cases in the District of Columbia

People: Superior Court Rules of Civil Procedure Rule 45, incorporated in Neglect Rules by Rule 1 of the Superior Court Neglect Rules states: A subpoena shall command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated tangible things. (See below regarding production of records.)

A subpoena may be served by any person who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof by such person. Subpoenas are to an individual; this rule does not permit the subpoena to issue for one person to produce another person.

Records: D.C. Code 2001 Ed, §4-1303.06 deems the records of the Agency to be confidential. D.C. Code 2001 Ed, §4-1405(c) states that records which are deemed confidential shall not be available for inspection by nor disclosure to any person, firm, corporation, association or public agency and shall not be subject to judicial subpoena in collateral proceedings. Subpoenas should not be accepted for records in cases that are Neglect, Adoption or Guardianship proceedings. Records in those cases are produced in discovery and any subpoenas for records in Neglect, Adoption or Guardianship proceedings should be directed to the assigned AAG.

What Should I Do if I am Served with a Subpoena or Summons?

If a CFSA employee is served with a subpoena or summons concerning an ongoing neglect case³ for which the employee may be involved, that employee should contact the Child Protection Section Assistant Attorney General (CPS-AAG) assigned to the case immediately or no more than 24 hours of receiving service.

If a CFSA employee is served with a subpoena or summons NOT concerning an ongoing neglect case for which the employee may be involved as an employee of CFSA, that employee should contact the Office of the General Counsel immediately or no more than 24 hours of receiving service⁴.

If a CFSA employee is served with a subpoena or summons in a personal case unrelated to their employment at CFSA, that employee should seek outside counsel. The Office of the General Counsel will not offer advice regarding personal cases.

May I Refuse to Accept a Subpoena or Summons?

A person who is properly served with a subpoena cannot refuse to accept the subpoena. To do so

³ Includes guardianship, adoptions, and custody cases deriving from neglect cases.

⁴ It is not necessary for a CFSA employee to contact the OGC if they are served with a subpoena from an Assistant Attorney General in the OAG Child Protection Section when "service" is for a routine Abuse and Neglect Matter in the D.C. Superior Court Family Court. However, any questions or issues can be brought to the OGC.

would subject the person to criminal sanctions, including contempt of court. Such a finding could subject you to pay a fine or be jailed. A person who is properly served with a summons likewise cannot refuse to accept it, under pain of a default judgment.

What if I Have a Conflict with the Date or Time?

If one has a legitimate conflict with the date or time for appearance you must immediately (within no more than one business day) contact your AAG (if this is a neglect/adoption case) or the Office of General Counsel who may be able to arrange a more convenient time or date. Your conflict will have to be justified to the Court who will then determine if your appearance can be done at another time. It is imperative that you contact the AAG or OGC immediately. Do not wait for the last moment.

Will the Office of the General Counsel accept service for me?

The Office of the General Counsel **WILL NOT** accept service if the subpoena or summons is for a matter unrelated to the CFSA employee's work at CFSA (in other words, a private matter). The OGC will instead instruct the process server to personally serve the CFSA employee. Similarly, the OGC will not advise the CFSA employee on subpoenas and summons received in personal matters. Matters related to CFSA employment generally are matters such as Neglect, Domestic Relations, Custody, Adoption and other Civil or Criminal matters involving parents, children or others that a CFSA employee may know something about due to working at CFSA.

The Office of the General Counsel **WILL NOT** accept service on CFSA's employees (except for service upon the Director, Deputy Director, and Custodian of Records). However, as a courtesy and convenience, the OGC **WILL** accept service on matters related to CFSA employment **IF** the employee wishes to be served through the OGC. The OGC may attempt to locate an employee to ask if they wish to be served through our office. If the answer is yes, the OGC will indicate on the subpoena that the "service" was made at the request of the CFSA employee. If the OGC is unable to contact the CFSA employee or the CFSA employee does not permit the OGC to accept service, the process server will be informed that the OGC will not accept service on behalf of the employee. The process server will then have to serve the employee through other means.

Will the Office of the General Counsel accept service for a child committed to CFSA?

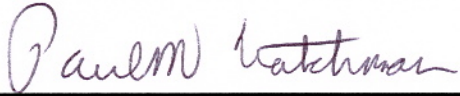
The Office of the General Counsel **WILL NOT** accept service on CFSA's wards, nor other non-CFSA employees.

Can I accept service for a child or person on my caseload?

No. You should not accept service on a child or person on your caseload. You can not guarantee the child's or person's appearance so you should not accept service.

REMEMBER! Subpoenas and Summons are extremely important and time sensitive documents. Do not fail to do SOMETHING with them as soon as you possibly can. Do not hesitate to contact your AAG or the Office of General Counsel with any questions or concerns you may have about this process.

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